



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4230-99

24 July 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you were evaluated by a medical board on 3 August 1993, and given a diagnosis of apophysitis (Scheuermann's disease), thoracolumbar, existed prior to enlistment (EPTE), aggravated by service. The medical board report indicates that you had a structural defect in your back from the T-11 to the L-3 vertebra, which caused chronic discomfort in your lower back. On 13 September 1993, the Record Review Panel of the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of that condition, which was classified as EPTE/not service aggravated. You apparently agreed with those findings, because you accepted them on 28 September 1993, and waived your right to a hearing before the PEB. You were discharged from the Marine Corps on 5 November 1993, without entitlement to disability benefits administered by the Department of the Navy.

The Board noted that in order to qualify for disability retirement, or separation with entitlement to severance pay, you must demonstrate that your back condition was incurred in or aggravated by your service in the Marine Corps. As noted above, you had a pre-existing

back defect. The condition was quiescent when you underwent your pre-enlistment physical examination, but became symptomatic shortly after you entered on active duty and began rigorous military training. Although the condition may have been worse from a subjective standpoint, there is no indication that there was an increase in the severity of the condition beyond its natural progression. The Board noted that the determination of the ratability of conditions evaluated by the PEB is within the purview of that body, and that the PEB is not bound by contrary findings of the referring medical board.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director